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March 15, 2004

VIA HAND DELIVERY AND ELECTRONIC MAIL

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Second Floor
Boston, MA 02110

Re: D.T.E. 03-98 – Petition of Towns of Franklin and Swampscott

Dear Secretary Cottrell:

On behalf of Massachusetts Electric Company (“Company”), I am enclosing for filing one (1) original and eight (8) copies of the Company’s Opposition to Motion to Reopen Hearing in the above-captioned matter. Thank you very much for your time and attention to this matter.

Very truly yours,

Judy Y. Lee

cc: William Stevens, Hearing Officer
Jody Stiefel, Legal Division
James Byrnes, Rates and Revenues Requirements Division
Joseph Passaggio, Rates and Revenues Requirements Division
Sean Hanley, Rates and Revenues Requirements Division
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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of the Towns of Franklin and Swampscott,
pursuant to G.L. c. 164. § 34A, for approval by the
Department of Telecommunications and Energy
to resolve a dispute between the Towns
and Massachusetts Electric Company,
with respect to the Towns' purchase of
street lighting equipment.

D.T.E. 03-98

**OPPOSITION TO MOTION TO REOPEN HEARING
OF
MASSACHUSETTS ELECTRIC COMPANY**

Massachusetts Electric Company ("Mass. Electric" or the "Company") hereby files its opposition to the Motion to Reopen Hearing ("Motion to Reopen"), dated March 10, 2004, submitted to the Department of Telecommunications and Energy ("Department") by the Towns of Franklin and Swampscott ("Petitioners"). As discussed below, the Department should deny the Petitioners' Motion to Reopen because the Petitioners have failed to meet the burden of establishing good cause to reopen the hearing. The Motion to Reopen is simply Petitioners' attempt, in hindsight, to present the same direct case again, only this time, Petitioners are attempting the present the direct case they wish they had presented the first time around. The evidentiary hearing in this matter lasted three full days, two of which were devoted to the Petitioners' direct case. Petitioners should not be given another opportunity to present the same case.

I. Standard of Review

The Department's procedural rule on reopening hearings states, in relevant part, that "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." 220 C.M.R. §1.11 (8). The Department has defined good cause, for the purposes of reopening a hearing, "as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision." Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990); Petition of Bay State Gas Company, D.T.E. 01-81 at 27-33 (2002).

II. Petitioners' Motion to Reopen Fails to Establish Good Cause

Petitioners' Motion to Reopen presents no new evidence regarding issues material to the dispute resolution proceeding to allow the Department to find good cause to reopen the hearing. To the contrary, the statements in Petitioners' Motion to Reopen simply rehash matters that have already been fully addressed during the testimony given at the hearing.

First, Petitioners allege that Mr. Jeff Nutting will provide testimony regarding the due diligence undertaken by the Town of Franklin to analyze the purchase price methodology and purchase price for the streetlights provided by the Company, in particular, comparing the Franklin purchase price with the tax book value for Franklin and the purchase price methodology undertaken by Boston Edison in other communities since the letter order in D.T.E. 01-25 was issued. However, Mr. William A. Fitzgerald, Director of Public Works for the Town of Franklin, testified that his role in the dispute was to "assist in the due diligence of the Town of Franklin to evaluate the proposal offered by Mass. Electric." February 24, 2004 Transcript, p. 185. In addition, Mr. Fitzgerald testified that he had completed the due diligence "Best I can, yes." when Mr. John Shortsleeve, attorney for the Petitioners, asked Mr. Fitzgerald whether he had "completed the due diligence, regarding your portion of it at least, with respect to this project?" Id. Since Mr. Fitzgerald has already testified that the Town of Franklin has completed its due diligence, and Mr. Fitzgerald was given the opportunity during the hearing to offer testimony regarding Franklin's due diligence efforts, the Petitioners should not be given an additional opportunity to present further testimony regarding their due diligence efforts. Moreover, ample testimony was proffered during the hearing regarding the differences between the Company's streetlight purchase price methodology and its tax book values to allow the Department to rule on this issue. Petitioners do not meet the Department's standard for good cause shown on due diligence and the difference between streetlight purchase price methodology and tax book values. The issue of whether Boston Edison's purchase price methodologies are germane to this proceeding is a legal matter for the Department to decide, and Mr. Nutting's testimony would not provide any further illumination on this issue.

Second, Petitioners allege that Mr. Nutting will provide clarifying testimony regarding the use of the Brite-Lite information report. However, the Hearing Officer ruled during the hearing that the probative value of the Brite-Lite exhibit (JKC-1) was limited to "show what the typical repair rate might be for streetlights in general. It does not mean necessarily that there is applicability to Swampscott or Franklin." February 24, 2004 Transcript, p. 22. Petitioners' counsel did not object to the Hearing Officer's ruling. Id. Since the Hearing Officer has already ruled as to the relevance of the Brite-Lite information in this proceeding, the Petitioners should not be given an opportunity to present further evidence with respect to the Brite-Lite report, because the information has no relevance in this proceeding. Furthermore, this ruling came early on the first day of two days of Petitioners' direct case, and every witness following Mr. Curran referred to the Brite-Lite information, as did Mr. Shortsleeve several times. See, e.g., February 24 and 25 Transcript, pp. 84-94, 101-107, 190-192, 234-239, 298-299, and 345-346. Petitioners had ample opportunity to present more evidence regarding the Brite-Lite information report if they had wished to do so during the hearing. These facts certainly do not meet the Department's definition of good cause, as set forth above.

Third, Petitioners argue that Mr. Nutting, “the principal witness” for Franklin, should be allowed to testify for reasons of fundamental fairness. Motion to Reopen, p. 4. The fact is that the Petitioners chose not to have Mr. Nutting testify. Petitioners’ February 23, 2004 witness designation did not list him as a witness. Mr. Nutting did not make himself available during the time that the Petitioners put on their direct case, and the Petitioners had Mr. Fitzgerald testify as the representative from Franklin instead. Petitioners did not ask for a continuance of the hearing in order to make it possible for an unavailable witness to attend. When, on the third day of the evidentiary hearing, the Hearing Officer ruled that he would not allow Mr. Nutting to testify, Petitioners did not enter an objection. March 8, 2004 Transcript, p. 554. Now that the hearing has closed, Petitioners cannot argue *ex post facto* that they were denied a full and fair opportunity to present their case and all of their witnesses. This argument does not meet the Department’s definition of good cause shown, as described above.

III. Conclusion

For the reasons stated above, Mass. Electric requests that the Department deny Petitioners’ Motion to Reopen. In the alternative, if the Department grants Petitioners’ Motion to Reopen, Mass. Electric reserves the right to cross-examine Mr. Nutting and provide rebuttal testimony as necessary.

Respectfully submitted,

MASSACHUSETTS ELECTRIC COMPANY
By its attorneys,

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Dated: March 15, 2004